A

SIN HAI ESTATE BHD & ORS

v.

LIM JIT KIM & ORS

B

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[SUIT NO: MT1-22-11-2003]
17 JANUARY 2007

C ***CIVIL PROCEDURE:*** *Striking out - Writ and statement of claim - Appeal against - Determination of question of law - Whether an appropriate case for court to invoke O. 14A Rules of the High Court 1980 - Actual meaning of words in averments - Whether matters of controversy which must be determined after full trial - Whether could be* D *dealt with or determined under O. 14A or O. 33 r. 2 RHC - Whether learned registrar erred*

CIVIL PROCEDURE: *Action - Disposal of - Rules of the High Court 1980, O. 14A - Appeal against - Determination of question of law* E *- Whether an appropriate case for court to invoke O. 14A Rules of the High Court 1980 - Actual meaning of words in averments - Whether matters of controversy which must be determined after full trial - Whether could be dealt with or determined under O. 14A or O. 33 r. 2 RHC - Whether learned registrar erred*

F The plaintiffs herein had prayed for, *inter alia*, damages based on defamation; interest from the date of judgment to the date of realization; and costs. Pursuant to O. 14A of the Rules of the High Court 1980, defendants 1 to 19 sought, *inter alia*, an order to determine whether or not the words complained of were G capable of bearing the meaning attributed to them in the statement of claim, and if not, a consequential order that the plaintiffs' claim be dismissed and judgment entered for defendants 1 to 19. The learned registrar had held that the words used in the statement of claim were not defamatory, and pursuant to H O. 14A, struck out the plaintiffs' writ and statement of claim. Against that decision, the plaintiffs appealed. It was submitted by the plaintiffs that this was not an appropriate case for the court to invoke O. 14A as there should be a full trial. The defendants, however, submitted for the suitability of disposing of this action by I way of a single issue of law as formulated *ie*, can the plaintiffs rightly say that they have been defamed by defendants 1 to 19 as

stated in the plaintiff's statement of claim. It was contended that the words contained in the plaintiff's statement of claim were not defamatory in the legal sense and so the very substratum of action had collapsed.

Held (allowing the appeal, setting aside the order of the learned registrar and reinstating the plaintiffs' writ and statement of claim):

(1) The facts and circumstances as pleaded in the plaintiffs' statement of claim and the law applicable to a particular cause of action must be given due and careful consideration in order to determine the question of law. (para 31)

(2) The plaintiffs' aforesaid averments in the statement of claim were in their entirety reasonably capable of bearing the meaning pleaded and complained of by the plaintiff. The actual meanings of these words in the averments were in effect matters of controversy which must perforce be determined after a full trial having regard to the ingredients of defamation and the defences thereto. The aforesaid question formulated for defendants 1 to 19 could not be appropriately dealt with or determined under either O. 14A or O. 33 r. 2. There was no merit in the application of defendants 1 to 19. (para 33)

(3) The learned registrar had erred in striking out the plaintiff's writ and statement of claim. (para 34)

Case(s) referred to:

Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***

Collins v. Jones [1955] 2 All ER 145 ***(refd)***

Coopers & Lybrand v Singapore Society of Accountants & Ors [1988] 3 MLJ 134 ***(refd)***

Kamla Lal Hiranand v. Harilela Padma Hari & Ors [2000] 3 SLR 696 ***(refd)***

Keays v. Murdoch Magazines (UK) Ltd & Anor [1999] 4 All ER 491 ***(dist)***

Kerajaan Negeri Terengganu v. Petroliam Nasional Bhd & Anor [2003] 1 MLJ 260 ***(refd)***

Kian Lup Construction v. Hongkong Bank Malaysia Bhd [2002] 7 CLJ 32 HC ***(refd)***

Korso Finance Establishment Anstalt v. John Wedge (Transcript No: 14/387) (Unreported) ***(refd)***

Lewis v. Daily Telegraph Ltd, Levis v. Associated Newspapers Ltd [1963] 2 All ER 151 ***(refd)***
Microsoft Corporation & Ors v. SM Summit Holdings Ltd & Anor And Other Appeals [1999] 4 SLR 529 ***(refd)***
Payna Chettiar, Re v. Maimon Ismail & Ors [1977] 3 SLR 387 ***(refd)***
Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu [2003] 4 CLJ 337 CA ***(refd)***
Sin Hai Estate Berhd & Ors v. Lim Jit Kim & Ors [2003] AMR 335 ***(refd)***
Vohrah-Merican Sdn Bhd v. Gombak Land Sdn Bhd [2006] 3 AMR 263 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 14A, O. 14 r. 12, O. 33 r. 2
Defamation Act 1957

Other source(s) referred to:
The Supreme Court Practice, 1999 vol 1, para 14A/2/5

For the plaintiffs - Kevin Sathiaseelan; M/s Syed Alwi, Ng & David Chong
For the defendants - SP Chandra; M/s SF Pang & Chandra

Reported by Suhainah Wahiduddin

JUDGMENT

Low Hop Bing J:

Appeal

[1] After hearing encl (25) which is the summons in chambers filed by defendants 1 to 19, the learned registrar had on 6 February 2004 struck out the plaintiffs' writ and statement of claim.

[2] Against that decision, the plaintiffs had *vide* encl (44) appealed to me as judge in chambers.

Factual Background

[3] The instant civil suit was commenced by four plaintiffs against 20 defendants. *Vide* an order dated 31 December 2002, it was transferred from the Kuala Lumpur High Court and registered as Melaka High Court No. 1-22-11-2003. The plaintiffs pray for *inter alia* damages based on defamation; interest from the date of judgment to the date of realisation; and costs.

[4] On 8 March 2003, pursuant to O. 14A of the Rules of the High Court 1980, defendants 1 to 19 *vide* encl (25) sought *inter alia* an order to determine whether or not the words complained of are capable of bearing the meaning attributed to them in the statement of claim; and if not, a consequential order that the plaintiffs' claim be dismissed and judgment entered for defendants 1 to 19.

[5] The learned registrar held that the words used in the statement of claim were not defamatory, and pursuant to O. 14A, struck out the plaintiffs' writ and statement of claim.

Principles Governing O. 14A

[6] The objective of O. 14A is to expedite the final disposal of an action at the interlocutory stage with a view to saving of costs and time: per Arifin Zakaria J (now FCJ) in *Kerajaan Negeri Terengganu v. Petroliam Nasional Bhd & Anor* [2003] 1 MLJ 260.

[7] Order 14A enables the court to determine any question of law or construction of document where it appears to the court that such question is suitable for determination without full trial of the action: per Mohd Noor Ahmad JCA (later FCJ) in *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu* [2003] 4 CLJ 337.

[8] In *Korso Finance Establishment Anstalt v. John Wedge* (unrep, 15 February 1994 CA Transcript No. 14/387) the English Court of Appeal laid down the following principles:

(1) An issue is a disputed point of fact or law relied on by way of claim or defence.

(2) A question of construction is well capable of constituting an issue.

(3) If a question of construction will finally determine whether an important issue is suitable for determination under O. 14A and where it is a dominant feature of the case, a court ought to proceed to so determine such issue.

(4) Respondents to an application under O. 14A are not entitled to contend that they should be allowed to hunt around for evidence or something that might turn up on discovery which could be relied upon to explain or modify the meaning of the relevant document. (see *The Supreme Court Practice*, 1999 vol 1, para. 14A/2/5).

[9] *Korso, supra,* was followed by the Singapore Court of Appeal and High Court when dealing with their O. 14 r. 12 (= our O. 14A) which recognised that resort to the procedure can be made even where it does not dispose of the entire cause or matter (see *Payna Chettiar, Re v. Maimoon bte Ismail & Ors* [1997] 3 SLR 387; *Microsoft Corporation & Ors v. SM Summit Holdings Ltd & Anor and Other Appeals* [1999] 4 SLR 529; and *Kamla Lal Hiranand v. Harilela Padma Hari & Ors* [2000] 3 SLR 696).

[10] These principles were also followed by our High Court in *Kerajaan Negeri Terengganu, supra,* by our Court of Appeal in *Petroleum National Bhd, supra,* and by me in *Vohrah-Merican Sdn Bhd v. Gombak Land Sdn Bhd* [2006] 3 AMR 263 at pp 268 to 270 where the plaintiff's application was made under O. 14A seeking a determination of the question whether, on the true construction of the joint venture agreement, the defendant was still a beneficial owner of the half share in the petrol lot. On the grounds stated therein, I dealt with the question under O. 14A, allowed the plaintiff's application and gave the answer in the negative.

Defamation Action: Preliminary Issue Of Law

[11] Although defendants 1 to 19 were relying on O. 14A in filing the instant application, learned counsel for defendants 1 to 19 referred to *Keays v. Murdoch Magazines (UK) Ltd and Another* [1999] 4 All ER 491 which concerns the English O. 33 r. 3 which I shall now examine.

[12] The English O. 33 r. 3 is in *pari materia* with our O. 33 r. 2 which reads as follows:

> **2 Time, etc, of trial of questions or issues (O. 33 r. 2)**
>
> The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

[13] It is to be noted that O. 33 r. 2 is substantially equipollent to O. 14A.

[14] In *Keays, supra,* the subject matter of the libel action was an article in a monthly women's magazine under the heading "Laughing all the way to the bonk". Incidentally, I venture to surmise that the editor's and publisher's preference for the word "bonk" was to enhance sansationalism and circulation, although I am unable to find that word in the dictionaries. However, the word "bong" may be found in "The Lexicon Webster Dictionary" Vol I as an imitation of sound and is an illustration of onomatopoeia.

[15] Four paragraphs of the aforesaid article referred specifically to the plaintiff and her relationship with a British Cabinet minister who was alleged to be the father of her child. Pursuant to O. 33 r. 3 of the English Rules, the defendant applied to have a question tried as a preliminary issue. That question was whether the words complained of by the plaintiff were capable of bearing the meaning pleaded in the statement of claim. Both the master and the judge dismissed the application on the ground that the court had no jurisdiction. On appeal, the English Court of Appeal through the judgment of Neill LJ held that under the English O. 33 r. 3 (= our O. 33 r. 2), the court has jurisdiction in a libel action to order the trial of a preliminary issue in order to determine as a matter of law whether the words complained of by the plaintiff were capable of bearing the defamatory meaning for which the plaintiff contended and should exercise that jurisdiction in appropriate cases where it was apparent that a saving of costs would be achieved if the defendant was wholly or partially successful in showing that the words complained of were not capable of bearing the defamatory meaning for which the plaintiff contended. Similarly, the court has jurisdiction to order the trial of a preliminary issue to rule whether the words complained of were capable of bearing a meaning put forward by the defendant which was challenged by the plaintiff.

[16] The English Court of Appeal also proceeded to deal with the preliminary issue.

[17] In this connection, at p 498d, Neill LJ referred to the excerpts of speeches in the House of Lords in *Lewis v. Daily Telegraph Ltd, Lewis v. Associated Newspapers Ltd* [1963] 2 All ER 151, [1964] AC 234, where guidance was given as to the correct approach to ascertain the meanings of the words in libel action. His Lordship referred to a passage of Lord Reid as follows:

> There is no doubt that in actions for libel the question is what the words would convey to the ordinary man; it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs. I leave aside questions of innuendo where the reader has some special knowledge which might lead him to attribute to the words a meaning not apparent to those who do not have that knowledge.

[18] On the test that a judge should apply when ruling as to whether words were or were not capable of a particular meaning which the plaintiff might attribute to them, the learned Lord Justice referred to another passage by Lord Reid in the following words:

> … it is, I think, sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning they they would put on the words in question.

[19] Having applied this test, the Court of Appeal held that it could not be said that the words the plaintiff complained of were incapable of bearing the defamatory meaning for which the plaintiff contended, thereby ruling in favour of the plaintiff and dismissing the defendant's application.

[20] Upon the above analysis of *Keays, supra,* I am unable to say that it is of any assistance to defendants 1 to 19.

Statement Of Claim

[21] It was submitted by learned counsel Mr. Kevin Sathiaseelan for the plaintiffs that this is not an appropriate case for the court to invoke O. 14A as there should be a full trial.

[22] Mr. SP Chandra learned counsel for defendants 1 to 19 submitted for the suitability of disposing of this action by way of a single issue of law as formulated by him ie, can the plaintiffs rightly say that they have been defamed by defendants 1 to 19 as stated in the plaintiff's statement of claim? He contended that the words contained in the plaintiffs' statement of claim are not defamatory in the legal sense and so the very substratum of the action has collapsed.

[23] Defendants 1 to 19 cited the following authorities: A

(1) *Sin Hai Estate Berhd & Ors v. Lim Jit Kim @ Lim Tian Jee & 19 Ors* [2003] AMR 335;

(2) *Collins v. Jones* [1955] 2 All ER 145; B

(3) *Coopers & Lybrand v. Singapore Society of Accountants & Ors* [1988] 3 MLJ 134; and

(4) *Keays v. Murdoch Magazines (UK) Ltd and Another, supra*; C

[24] In order to appreciate the usefulness or otherwise of the authorities cited for defendants 1 to 19, it is appropriate for me to analyse them.

[25] First, *Sin Hai Estate Berhad, supra,* was the Kuala Lumpur precursor of the instant suit. Abdul Malik Ishak J was requested D to strike out the plaintiffs' writ and statement of claim on the ground, *inter alia*, that the plaintiffs' action was not within the local jurisdiction of the High Court at Kuala Lumpur. The learned judge declined to accede to the request and awarded costs against defendants 1 to 19. His Lordship instead transferred the suit to E the High Court at Melaka, and that is now the instant suit.

[26] *Collins, supra,* concerns a libel action which an officer of a local authority brought against a medical practitioner based on two letters sent to the authority's medical officer of health. The F plaintiff's statement of claim purported to set out the actual words of the libel. The defendant applied for particulars including the date, time and place of publication of the letters and of the precise words alleged to have been set out in each of the letters. The English Court of Appeal allowed the defendant's application. G

[27] In *Coopers & Lybrand, supra,* the plaintiffs sued the defendants for libel as a result of the defendants' press statement regarding the plaintiffs' audit of accounts of a certain company and its subsidiaries. The press statement was based on a report H of investigators who were appointed by the first defendant to investigate the accounts. The registrar made no order on the plaintiff's application for the production of the investigiators' complete report. On appeal, Chao Hick Tin JC of the Singapore High Court allowed the production for the purposes of the libel I proceedings.

[28] It is to be noted that none of the above authorities had the remotest relevance to an application under O. 14A or for that matter under O. 33 r. 2. Hence, I need only say that they have negated the submission presented for defendants 1 to 19.

[29] On my part, I shall hark back to the first principles in the law of defamation as contained in the Defamation Act 1957, under which the plaintiff bears the burden of proving that:

(1) the words are defamatory;

(2) they refer to the plaintiff; and

(3) the words are published (per Mohamed Dzaiddin J (later CJ Malaysia) in *Ayob bin Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321).

[30] In *Kian Lup Construction v. Hongkong Bank Malaysia Bhd* [2002] 7 CLJ 32, Ramly Ali J restated these principles as follows:

> … the plaintiff must prove three elements of the tort of defamation which are:
>
> (i) the plaintiff must show that the statement bears defamatory imputations;
>
> (ii) the statement must refer to or reflect upon the plaintiff's reputation; and
>
> (iii) the statement must have been published to a third person by the defendant.

[31] In my judgment, the facts and circumstances as pleaded in the plaintiffs' statement of claim and the law applicable to a particular cause of action must be given due and careful consideration in order to determine the question of law, be it under O. 14A or under our O. 33 r. 2 (= the English O. 33 r. 3). For this purpose, it is now necessary for me to consider the relevant averments in the plaintiffs' statement of claim.

[32] After a careful consideration thereof, the gist of the averments may be conveniently tabulated as follows:

Para	Averment
7(i)	Defendants 1 and 9 had in an undated letter to Secfin Sdn Bhd alleged that plaintiff 1's directors *viz* plaintiffs 2 to 4 had minimal education and were only able to communicate in Mandarin and Hokkien.
7(ii)	*Vide* letter, dated 11 August 2000 to plaintiff 1's chairman, defendants 1 and 9 alleged that someone in plaintiff 1 was trying to profit RM1 million from plaintiff 1.
7(iii)	Defendant 1 had *vide* letter dated 20 March 2001 to plaintiff 1's directors and a copy to the Companies Commission's branch office in Melaka, raised serious issues regarding the conduct of plaintiff 1's directors particularly plaintiff 2.
10	*Vide* winding-up petition filed by defendants 1 to 19 to wind up plaintiff 1, defendants 1 to 19 alleged criminal conduct against one Dato Tey Boon Giow (since deceased), the husband of plaintiff 2, thereby implicating the plaintiffs.
13 and 14	On or about 30 July 2001, defendants 1 to 19 circulated notice calling for plaintiff 1's extraordinary general meeting ("the EGM") and alleged that the plaintiffs had acted in breach of plaintiff 1's memorandum and articles of asociation.
15, 16 and 17	At the EGM, defendant 1 alleged that plaintiff 2 was illiterate in English and Bahasa Malaysia and could not understand the audited accounts nor manage plaintiff 1, but had been drawing full salary and travelling expenses, illegally using plaintiff 1's money for the family's food allowance and the funeral expenses of her husband, the late Dato Tey Boon Giow.

[33] Without expressing any view on the merits of the plaintiff's claim, and relying on the rules of ascertaining the meanings of the words as enunciated in *Keays, supra,* I hold that the plaintiffs' aforesaid averments in the statement of claim are in their entirety

reasonably capable of bearing the meaning pleaded and complained of by the plaintiff. The actual meanings of these words in the averments are in effect matters of controversy which must perforce be determined after a full trial having regard to the ingredients of defamation and the defences thereto. The aforesaid question formulated for defendants 1 to 19 cannot be appropriately dealt with or determined under either O. 14A or O. 33 r. 2. I am of the view that there is no merit in the application of defendants 1 to 19.

Conclusion

[34] On the foregoing grounds, I hold that the learned registrar has erred in striking out the plaintiff's writ and statement of claim. I therefore allow this appeal, set aside the order of the learned registrar, reinstate the plaintiffs' writ and statement of claim, with costs to the plaintiffs here and before the registrar.